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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DELIA BROAD RASKOV,

Plaintiff and Respondent,

v.

DANIEL RASKOV, as Co-Trustee, etc.,
et al.,

Defendants and Appellants.

E045061

(Super.Ct.No. INP019362)

OPINION

APPEAL from the Superior Court of Riverside County. James A. Cox, Judge.

Affirmed.

Orren & Orren, and Tyna Thall Orren; Lurie, Zepeda, Schmalz & Hogan, Steven
L. Hogan and Neeru Jindal, for Defendant and Appellant Daniel Raskov.¹

Michele Raskov Aronson, in pro. per., for Defendant and Appellant.

¹ On June 4, 2009, Lurie, Zepeda, Schmalz & Hogan filed a substitution of attorney on appeal as counsel for Daniel Raskov.

Best, Best & Krieger, G. Henry Welles, Douglas S. Phillips, and Kira L. Klatchko,
for Plaintiff and Respondent.

This is another appeal in the ongoing dispute between plaintiff and respondent Delia Raskov (Delia) and her stepchildren, defendants and appellants Daniel Raskov (Daniel) and Michele Aaronson (Michele),² over the trusts established by David Raskov (Father) and Delia. In this appeal, Daniel³ and Michele contend the probate court erred in removing them as successor trustees of the David Raskov Inter Vivos Trust (IVT).

I. PROCEDURAL BACKGROUND AND FACTS

Delia Raskov was the trustee of two trusts: The IVT and the Raskov Family Trust (RFT). The IVT was created on September 18, 1986 (and amended on October 19, 1990, and January 6, 2003), and the RFT was created by both Father and Delia. Father died on July 15, 2003, and both trusts became irrevocable.

Initially, Delia managed the IVT's day-to-day affairs.⁴ However, Daniel petitioned the probate court for an order requiring Delia and the custodian of her individual retirement account to return an asset (proceeds from the sale of a property in Los Angeles referred to as "L.A. property") to the IVT, to remove Delia as IVT Trustee, to require her to account for IVT assets, to appoint Daniel as Successor IVT Trustee, to

² Michele spells her name with only one "l."

³ Michele filed a notice of joinder in Daniel's opening brief, wherein she joined in the opening brief and adopted by reference all of it without further argument. However, Michele appeared at oral argument. Because Daniel was the primary moving party at the trial level and on appeal, we may refer solely to him throughout our opinion.

⁴ On June 10, 2008, we took judicial notice of the record in case No. E036931.

reform and construe the IVT, and to order Delia to reimburse the IVT and Daniel for the attorney fees incurred to remedy Delia's alleged breach of trust and bad faith regarding the L.A. property.⁵ Following trial, the probate court filed its order on July 21, 2006, removing Delia as a trustee of the IVT. Regarding attorney fees, the court conducted a separate hearing, and on October 2, 2006, it awarded \$120,000 in fees and costs to Daniel and Michelle, and \$40,401 to Delia, and directed that all fees and costs be paid from the IVT.⁶

On October 16, 2006, Delia filed a petition for approval of her account and for discharge as the IVT Trustee. Daniel filed objections. On October 25, he also filed a motion under Probate Code section 859⁷ to compel Delia to pay to the IVT double the amount of proceeds she retained from the sale of the L.A. property, and to modify the attorney fee order so that Delia would be required to reimburse the IVT for the \$120,000 spent in attorney fees. Delia opposed the motion on the ground that it was an untimely motion for reconsideration of the court's order after trial and subsequent award of attorney fees. Following argument, the probate court agreed with Delia and denied Daniel's motion.

⁵ Daniel also filed a petition in Riverside Superior Court case No. INP019363 regarding the RFT. He sought to confirm that Delia had only a life estate in the family home in Palm Springs and that she lacked the power to alter the four RFT beneficiaries. He also sought to remove her as RFT trustee.

⁶ On June 16, 2009, we took judicial notice of the record in case No. E044285.

⁷ All further statutory references are to the Probate Code unless otherwise noted.

On December 15, 2006, Delia filed a motion for sanctions under Code of Civil Procedure section 128.7, requesting that Daniel and his counsel be sanctioned for having brought the section 859 motion. On February 8, 2007, the court awarded Delia \$18,000 in sanctions against Daniel. On March 19, Daniel appealed the court's decision.⁸

Trial on Delia's petition for approval of account and discharge was heard in June and July, 2007. One issue discussed was the payment of the \$120,000 in attorney fees by the IVT. The parties disagreed on whether the payment should come from IVT income or IVT principal. Delia argued that the court had previously ruled she would not be surcharged the \$120,000 and that the court lacked jurisdiction to modify its August 23, 2006, order. A hearing was held on July 13, 2007. On August 24, 2007, the court issued its order clarifying its 2006 order awarding fees. The court noted that Delia's bad faith precipitated the dispute that resulted in the attorney fees, and that the court "failed to specify how the \$120,000 was to be paid or allocated between income and principal, which failure resulted in a dispute over the amended account." Recognizing that payment of the \$120,000 from IVT's principal would penalize Daniel and Michele, the court determined that the amount "is the responsibility of [Delia], and may be attributed entirely to trust income, including the amounts payable to her in the monthly stipend, until the entire amount of \$120,000 is recovered to the trust." The court's order was entered on August 24, 2007, notice was served on September 12, 2007, and Delia appealed.

⁸ On June 16, 2009, we took judicial notice of the record in case No. E042666.

Previously, on February 27, 2007, Delia had filed a petition to remove Daniel and Michele as co-trustees. She claimed breach of trust and hostility, among other things. She sought the appointment of the public administrator as successor trustee. Daniel and Michele opposed the petition, denying the allegations. After a contested hearing on the petition, the probate court granted it, removed Daniel and Michele as trustees, and appointed Kenneth Jenkins as successor trustee. The court's statement of decision and judgment were filed on January 15, 2008. According to the statement of decision, the probate court found that hostility existed between the trustees and Delia, which had impaired the administration of the IVT, the trustees breached their fiduciary duties to Delia, and that they acted in bad faith towards her. Daniel and Michele appealed.

II. DISCUSSION

A. *Standard of Review*

Section 17200 allows a beneficiary of a trust to petition the court “concerning the internal affairs of a trust,” including “[a]ppointing or removing a trustee.” (§ 17200, subds. (a) & (b)(10).) Section 15642 sets forth the statutory grounds for removing a trustee. These grounds include “[f]or other good cause.” (§ 15642, subds. (a) & (b)(9).) Hostility between the trustee and the beneficiary that impairs the administration of the trust provides good cause for removal. (*Estate of Gilmaker* (1962) 57 Cal.2d 627; *Brown v. Memorial Nat’l Home Foundation* (1958) 162 Cal.App.2d 513, 534, superseded by statute on another ground as stated in *Patton v. Sherwood* (2007) 152 Cal.App.4th 339, 347.) A judgment removing a trustee is reviewed for abuse of discretion. (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 430.)

B. Analysis

Following the hearing on Delia's petition to remove Daniel and Michele as trustees, the probate court concluded there was "a real clear history of hostility" between the trustees and Delia, the former trustee. Furthermore, the court stated: "And I'm basing my ruling not only on the *[sic]* if my comments weren't sufficient from what I've stated already that the [section] 859 petition in and of itself was ground to remove the trustees as well as the objections to the . . . accounting were of little or no merit; the failure to . . . provide information and backup material with regard to the San Bernardino County refund; the trust expenses that were itemized or . . . they were not itemized, they were lumped in their monthly reports; and there were multiple requests for explanations of the attorney's fees and trustee's fees and . . . trust expenses and that information was not provided as requested, all in violation of the second amendment to the trust itself as well as a violation of [section] 16061, and those refusals went on for a minimum of six or seven months.

"I do question as well *[sic]* find that Daniel Raskov and Michele Raskov obtained a rather expensive appraisal on the property and the court finds that that was done for the sole purpose of prosecuting their objections to the accounting to relitigate the value of the [L.A.] property, and that was an improper expenditure from the trust. And again, I've indicated that I believe [Daniel's] testimony to the contrary has no credibility whatsoever, particularly in light of the fact that there's been no request made to adjust those taxes from the sale that occurred in 2004 and here we are almost ready to turn 2008. And I

would hope that that fee won't be shown as charged against the trust when the accounting is ultimately filed.

“Again, [I] believe that . . . this resistance of this petition for removal was not justified. That [Daniel] and his sister should have stepped down long ago.”

Daniel and Michele challenge the probate court's reasons for removing them as trustees of the IVT. They claim that (1) by the time of the order, “all legitimate sources of friction between the trustees and Delia were eliminated”; (2) the conduct that the court found as hostile “amounted to meritorious efforts to obtain the court's assistance in enforcing the [IVT's] rights”; (3) all hostility “was engendered by Delia and her sons”; and (4) David's intent was that Daniel and Michele should serve as his trustees if Delia became unable to do so.⁹

1. Elimination of All Sources of Friction

According to Daniel and Michele, “the purpose of removing a trustee is to preserve the trust assets, not to inflict a penalty for past action.” They claim that all of the past disputes have been resolved and there is no present threat to trust assets. More

⁹ At oral argument, Michele asked that this court reverse the trial court's decision to remove her as trustee on the grounds there has never been any hostility between her and Delia, Daniel was the primary moving party for all of the motions, and that she has only participated in litigation for purposes of defending herself. However, Michele has failed to offer specific citations to the record. Her opening brief merely joined in Daniel's brief without offering any separate support for her argument. A “reviewing court is not required to make an independent, unassisted study of the record in search of error” (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) An appellant has the burden of demonstrating both error and prejudice. In the absence of a meaningful argument demonstrating prejudice, we may treat an issue as waived. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105-106.)

specifically, they argue that the disputes relating to Delia's account were "completely put to rest when the formal order approving the account was entered on August 3, 2007."

Regarding the dispute over the allocation of payment of the attorney fees between trust principal and income, that ended on August 21, 2007, when the court stated the fees were to be paid from Delia's share of trust income. And, as to their duty to provide information, on August 3, 2007, the court ruled that the monthly reports with backup documentation available for inspection constituted compliance. With these sources of friction removed, Daniel and Michele claim there was no basis for their removal. We disagree.

We, like the probate court, find "there's a real clear history of hostility to the extent that if any family member of this case remains the trustee in this case, the litigation will never stop. This trust [has] basically been ground to a halt by litigation between these three people. And as long as any one of the three remains as a trustee in this trust, and you have to be aware of this counsel, I know Mr. Welles is, I know I am because I've been seeing this case in front of me over and over again for three years." After reading the transcript of the hearing, the hostility between the parties, and counsel, is apparent. The fact that past disputes have been resolved does not support a conclusion that the hostility is forever gone.

2. Meritorious Efforts to Enforce the IVT's Rights

Daniel and Michele claim the filing of the section 859 motion was not brought out of hostility but was brought in good faith to secure a legitimate right. While double damages were not awarded, they argue that the probate court, on its own, recognized the

injustice in requiring payment of the \$120,000 in attorney fees out of trust principal and ordered that it come from trust income due to Delia's bad faith actions. We reject these contentions. In our view, the probate court recognized the ambiguity in its prior order and merely sought to clarify it. The fact that Daniel brought a section 859 motion despite the court's prior statements and order demonstrates the lack of good faith on his part.

In this court's view, it appears that Daniel and Michele regularly shop for counsel who will take whatever legal action they want taken regardless of merit. Delia has had the same counsel throughout the years of litigation, Daniel and Michele have not.¹⁰ This court finds that the need to switch counsel as frequently as they have is questionable. As we noted in the appeal regarding the order sanctioning Daniel in the amount of \$18,000, "Daniel used different counsel to bring his section 859 motion. Although there is nothing in the record disclosing the reason for the change in counsel, given prior counsel's success in the petition to remove Delia and recover attorney fees, we question whether the decision to seek new counsel had to do with prior counsel's refusal to bring a section 859 motion. Moreover, although the trial court chose to sanction Daniel only, we note that his counsel, Mr. Smith, claimed to have 'carefully reviewed the Second Amended Petition, July 19, 2006 Order After Trial, the August 23, 2006 Minute Order Re: Attorney's Fees, and the hearing transcript from the attorneys' fees hearing to determine whether the Section 859 issues had been pled, argued or decided.' If Mr. Smith did

¹⁰ Mr. Stapke represented them in the petition to remove Delia as a trustee. Mr. Smith represented them in their section 859 motion. Mr. Murphy represented them in their defense of Delia's petition to remove them as trustees. Ms. Orren drafted the briefs in this appeal. Mr. Hogan substituted in as counsel in June 2009.

carefully review these documents, he should have noted Mr. Stapke's (Daniel's prior counsel) statement that they 'had contended during the trial and actually in post trial briefing that [section] 859 of the Probate Code . . . would preclude her from recovering anything. . . . We also contended in those papers that she should be surcharged the amount of fees paid by the trust to us to win the case. And get the money back. Those are, again, contentions that the court apparently considered and did not accept in the course of reviewing and signing the final order . . . in the case.'" The fact that Mr. Smith pursued the section 859 motion suggests, at best, he was merely a hired gun for Daniel and Michele, or at worst, that he lied about his review of the prior record. Nonetheless, the fact that Daniel and Michele have jumped from attorney to attorney speaks volumes.

3. The Hostility Is Caused by Delia and Her Sons and Father's Intent

According to Daniel and Michele, "Delia 'threw the first punch' in the disputes between the parties" by converting a quarter of a million dollars in trust assets. This action prompted them to seek her removal as a trustee. Once they were named co-trustees, Delia's sons "launched their campaign of harassing [them]." Regardless of who threw the first punch, the fact remains the punches continued to fly. Daniel and Michele quickly forget their action of bringing the section 859 motion, which sought to double the damages which Delia owed to the IVT. It wasn't enough that she was ordered to replace the money in the IVT and then reimburse the \$120,000 in attorney fees, Daniel and Michele wanted more. We do not blame Delia's sons for coming to her rescue and taking a more active role on her behalf. They were protecting their elderly mother. Nonetheless, the actions that Daniel and Michele sought amounted to more than just

acting in the best interests of the IVT. They sought to punish Delia. Their attempt to place all the blame for the hostility on Delia and her sons is misplaced.

We reject Daniel's and Michele's reliance on *Copley v. Copley* (1981) 126 Cal.App.3d 248). In that case, the appellate court found that removal of the trustee based on hostility was not warranted under the circumstances because the essential element of trust impairment was missing. (*Id.* at p. 288.) Nonetheless, the court recognized hostility that impairs the trust is a proper ground for removal of a trustee. (*Ibid.*) The *Copley* court discussed the court's discretion to remove a trustee named by the settler based on a conflict of interest, stating, "'When the settler of a trust has named a trustee, fully aware of possible conflicts inherent in his appointment, only rarely will the court remove that trustee, and it will never remove him for potential conflict of interest but only for demonstrated abuse of power detrimental to the trust.'" (*Id.* at pp. 286-287.) In contrast to *Copley*, here the hostility was clearly impairing the administration of the IVT. Ample evidence in the record, along with the fact that this is the third of three simultaneous appeals, demonstrates that until a neutral trustee is appointed, the litigation will continue and all of the IVT's assets will go to the lawyers. Clearly, that was not Father's intent.

III. DISPOSITION

The order removing Daniel and Michele as trustees is affirmed. Costs are awarded to Delia.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

GAUT

J.